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ABSTRACT

Since the "New York Times Co. v. Sullivan" decision in 1964, courts have debated the degrees of protection from defamation that should be offered to individuals and the concomitant degree of freedom that the press should have to report on matters of public concern. Most recently, the Supreme Court has attempted to balance these competing interests in the cases of "Gertz v. Robert Welch, Inc." and "Time, Inc. v. Firestone." From these two cases come new definitions of public figures and private individuals, two categories given differing amounts of protection under the law. After examining the various manners in which state courts and lower federal courts have construed these definitions, it is concluded that there will be no rest for publishers and broadcasters while the criteria for determining who is a public figure and who is a private individual are so unsettled. (Author/KS)

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GERTZ AND FIRESTONE: HOW COURTS HAVE CONSTRUED THE "PUBLIC FICURE" CRITERIA

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> If it be against a private man it deserves severe punishment, for although the libel be made against one, yet it incites all those of the same family, kindred, or society to revenge, and so tends . . . to quarrels and breach of the peace, and may be the cause of shedding of blood, and of great inconvenience; if it be against a magistrate, or other public person, it is a greater offence; for it concerns not only the breach of the peace, but also the scandal of Government . . . .[1]

Since the New York Times Co. v. Sullivan[2] decision in 1964, courts have debated the differential degrees of protection from defamation that should be offered to individuals, and the concomitant degree of freedom the press should have to report on matters of public concern without fear of inhibiting litigation. Most recently the Supreme Court has attempted to balance these competing interests in Gertz v. Robert Welch, Inc.[3] and Time, Inc. v. Firestone.[4] Out of these two cases come new definitions of two categories of persons given differing amounts of protection, i.e., public figures and private individuals. This paper will examine how state and lower federal courts have construed these definitions to see if they have brought additional clarity to the murky waters of libel law.

One of the major questions in considering the degree of protection from defamation actions to be allowed the media is how to balance the First Amendment freedom of the press with the states' obligations to protect citizens' reputations from

unwarranted harm. Aside from the position of former Justices Black and Douglas that all expression involving matters of public concern should be absolutely protected, there are basically two approaches to resolution of this conflict. First, there is the "issue" approach which, like the absolutist stance, holds that public questions should be discussed fully. But, recognizing that individual reputations must have some protection, adherents of this approach would allow punishment for defamatory reports published or broadcast with actual malice, i.e., "with knowledge that [the report] was false or [published] with reckless disregard of whether it was false or not."[5] Second, the "person" approach holds that individuals have more protection and that legal and definitional questions are easier to resolve if categories of persons are established. Thus, private persons would have most protection from defamatory statements, public figures would have less protection, and public officials would be the least protected. Instead of defining "public issue," and forcing the plaintiff to prove actual malice, an almost impossible burden, the person approach requires categorizing an individual based on "his conduct and participation in public discussion."[6]

The Supreme Court has variously taken both of these approaches, beginning by focusing on the person (New York Times), then emphasizing the issue (Rosenbloom v. Metromedia[7]), and, in the Gertz case, returning to the person approach. Since the New York Times decision, the Court has been concerned with striking

a balance between allowing an unfettered press to investigate, report on, and foster public discussion about governmental and public issues on one hand, and protecting individuals from wrongful injury to their reputations on the other. Initially, the balanced tilted toward the former; it now appears to weigh more heavily toward the latter.

Prior to New York Times, the media relied primarily on common law defenses in defamation suits, e.g., truth, conditional privilege, and fair comment. In New York Times the Supreme Court attempted to ease the perceived chilling effect on reporting about public officials wrought by state libel laws. The Court read the First Amendment as limiting a state's power to allow damages for defamation to such officials. A public official could recover for injury to his reputation only when the defamation was published with actual malice, inadequately defined by the Court in that decision. Two years later in Rosenblatt v. Baer[8] the Court held that "public officials" included "at the very least" those who "have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."[9] Then in Curtis Publishing Co. v. Butts[10] the media's protection under the New York Times rule was extended from public officials to public figures. A divided court said that persons in the two categories could be equated in their importance and influence,[11] and held that Wally Butts, as athletic director of the University of Georgia, fit the definition of public figure.

The first case to shift the focus in applying the New York Times rule from persons to issues was Time, Inc. v. Hill.[12] Although ostensibly a privacy case, the Court treated it as a defamation action because the New York statute under consideration allowed truth as a defense to a charge of invasion of privacy. The Court held that the statute could not be used to "redress false reports of matters of public interest" unless the New York Times actual malice standard was met. Although Justice Brennan stressed in the majority opinion that Time, Inc., applied only to the New York statute and factual situation in question, the change in Court position was evident.

This extension of the constitutional rule reached its fruition in Rosenbloom v. Metromedia, Inc.,[13] in which a Court plurality held that the key element was an issue of "public or general concern." The Court stated that the press should be protected from defamation suits while reporting on such an issue, and this protection should not be lessened "merely because a private individual [was] involved, or because in some sense the individual [had] not 'voluntarily' . . become involved."[14] After Rosenbloom, then, the actual malice test applied "to all discussion and communication involving matters of public or general concern, without regard to whether the persons involved are famous or anonymous."[15] Specifically, it was stated that "[d]rawing a distinction between 'public' and 'private' persons makes no sense in terms of the First Amendment guarantees."[16]

Three years later a 5-4 Court majority made sense of the distinction; in fact, it held in Gertz that such a distinction was a crucial consideration in defamation cases. Justice Blackmun, deserting his concurrence in Rosenbloom to be the swing vote in Gertz, justified his action by claiming the decision would allow the Court to "come to rest in the defamation area . . . ."[17]

Gertz's path to the Supreme Court began when Elmer Gertz, a Chicago attorney who had been active in civil and professional affairs, represented the family of a young man who had been slain by a Chicago policeman. Gertz was involved only in civil litigation against the policeman, not in the criminal action in which the officer had been found guilty, although he did make an appearance at the coroner's inquest. An article in American Opinion, a John Birch Society publication, accused Gertz of being part of an anti-police conspiracy, called him a "Leninist" and a "Communist-fronter," and said he was involved with communist organizations. The magazine's editor had not verified the information, instead relying on the free-lance writer of the article. Gertz filed a defamation suit and won a $50,000 jury verdict. However, the federal district court judge then decided the New York Times rule would apply to the case since a matter of public interest was involved and ruled that Gertz had not shown actual malice. The Seventh Circuit affirmed and Gertz appealed to the Supreme Court.

In terms of the public figure/private individual question, the Court held that the New York Times rule continues to apply

to public officials and public figures; that is, they must prove actual malice to recover in defamation suits. Private individuals, a category redefined by the Gertz court, must prove only a degree of fault by the publication, to be defined by individual states so long as they do not impose strict liability (liability without fault) upon the news media. Additionally, punitive damages can be recovered by any category of person only on a showing of actual malice. Any lesser showing limits private persons to recovery for actual damages, though these were defined to include humiliation and mental suffering. Thus, the court reverted to the "person" approach of New York Times, modifying and refining it, and rejected the "issue" approach of Rosenbloom. The focus moved from considering First Amendment freedoms on the basis of the importance of the speech involved to considering the amount of protection defamed persons deserve, holding that it is not possible to determine categories of more or less protected speech.[18]

Essentially, the Gertz Court accepted Justice Marshall's approach and Justice Harlan's rationale, both dissenting in Rosenbloom.[19] Private persons, said Justice Powell writing for the Gertz majority, deserve more protection than public officials or public figures because private individuals (1) have less access to the media to defend themselves against defamatory charges and are therefore "more vulnerable to injury," and (2) have not chosen to expose themselves to public scrutiny as have persons in the other two categories.[20]

The Gertz Court defined public figure in two ways: (1) One can become a public figure by actively seeking publicity for one's activities, by thrusting oneself "to the forefront of particular public controversies in order to influence the resolution of the issues involved."[21] This is a question for determination based on proof of specific activities. One danger is that this precludes summary judgments for the media, meaning that certain expenses for litigation inevitably will be faced. (2) One can become a public figure by voluntarily assuming a role in which publicity is expected or assumed, i.e., "roles of especial prominence in the affairs of society."[22] Thus, the New York Times rule will not be applicable unless an individual voluntarily "assume[s] a special prominence in the resolution of public questions."[23] The Court suggested "looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation."[24] Importantly, a person need not be a public figure for all facets of his life unless he is generally well known in the community and distinctly involved in community affairs, or occupies a position of "persuasive power and influence." Involvement in one particular controversy does not make a person a public figure for all purposes. Elmer Gertz, for instance, was not classed as a public figure, in part because he had refused to grant interviews concerning the civil litigation which prompted the American Opinion comments, and he did not attempt to gain public support for his clients. He was involuntarily drawn into the

public spotlight; he did not thrust himself into it. The Court said that "he had achieved no general fame or notoriety in the community,"[25] supporting this by noting that "none of the perspective jurors called at the trial had ever heard of petitioner prior to this litigation, and respondent offered no proof that this response was atypical of the local population."[26] By reciting these circumstances, the Court was perhaps indicating the types of affirmative actions and proofs which could be used as criteria to classify someone as a public person.[27] The Court did note that a person might be involuntarily put in a position of being a public figure "through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare."[28]

As with the New York Times phrase, "actual malice," it will require a series of cases to differentiate public figure from private person, to explicate the "social role" test.[29] The Supreme Court helped to define "actual malice" in subsequent decisions,[30] and it has begun to do so for "public figure" and "private person" as well.

In Time, Inc. v. Firestone,[31] the Court defined as a private person a woman who was married to a member of a wealthy industrial family, was a party to a divorce trial intermittently lasting 17 months and receiving considerable media coverage, called several press conferences during the divorce trial, and subscribed to a press clipping service. This case arose when Time magazine reported in its "Milestones" column that Russell A. Firestone was granted a divorce on the grounds of extreme cruelty and adultery. Mary Alice Firestone claimed the grounds

had been extreme cruelty only. The Court stated that Ms. Firestone

> . . . did not assume any role of especial prominence in the affairs of society, other than perhaps Palm Beach society, and . . . did not thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it.[32]

The fact that certain portions of the public may be interested in the marital difficulties of wealthy individuals does not make them the types of public controversies referred to in Gertz, the Court said. Ms. Firestone was "compelled to go to court by the State," said Justice Rehnquist writing for the 5-3 majority, ruling that the divorce trial was not intended as a means of obtaining publicity nor as a means of attaining "special prominence in the resolution of public questions." The Court would not extend a "blanket privilege" for reports of judicial proceedings, instead emphasizing that Gertz "eschew[s] a subject matter test for one focusing upon the character of the defamation plaintiff."[33] Justice Marshall in dissent, reciting much of the information about Ms. Firestone noted by the majority, insisted that she met the Gertz test for public figure, i.e., she was able to "resort to self-help" as evidenced by the numerous articles concerning her divorce in local newspapers and the press conferences she held, and she had voluntarily "thrust" herself into public attention by becoming a member of the "sporting set," a "social group with 'especial prominence in the affairs of

society' . . . whose lives receive constant media attention."[34]

There has not yet been sufficient time for Firestone to have an impact on state and lower federal courts, but a review of post-Gertz defamation cases in these courts indicates that considerable variation--perhaps confusion--exists in their attempts to define private person. This is perhaps because Gertz does not rectify a problem noted by Justice Powell in that decision, i.e., that Rosenbloom requires judges, on an ad hoc basis, to define "public issue."[35] Gertz also requires ad hoc determination, now in defining "social role" or assessing the degree of plaintiff's publicity-seeking activities. Editors as well as judges face this task. No longer having the broad protection given in Rosenbloom, editors must assess whether individuals named in news stories will be considered public or private persons by the courts. If the former, more latitude is available in reporting on them, if the latter, less latitude is available and a greater danger of defamation suits is faced.

State and federal courts have begun to construe the Gertz decision; nearly 30 cases had dealt with the public figure/private individual distinction by early 1976. However, no single clear pattern has emerged. Rather, several different approaches seem to be followed, from attempting to carefully adhere to the Supreme Court's language to specifically rejecting the Gertz criteria. At least one court has seemingly chosen simply to ignore the case.[36]

Many courts have quoted the criteria specified in Gertz for distinguishing private from public persons and have applied them to the facts of the cases. For instance, Frederick B. Exner, a physician who was an active opponent of flouridation, claimed he was defamed in an article in Today's Health, published by the American Medical Association. A Washington appellate court noted that Exner was "not universally famous but is well known among those involved in the argument over flouridation. It is within this orbit that the plaintiff cast aside his mantle of privacy." The court held that Exner had voluntarily exposed himself "to the limelight," had attempted to "order society" regarding the flouridation issue, and therefore was a public figure.[37]

Similarly, an Illinois appellate court held that two junior college teachers involved in a controversy over the use of Black-authored books in English classes "had become actively engaged in the college controversy." While they were not to be considered public figures for all purposes, they did fall into that category within the college community "which was the community served by the publication" (the student newspaper which had printed a letter concerning the issue and referring to the two teachers).[38]

This concept from Gertz that a person can become a public figure "for a limited range of issues" was applied by a federal district court to a certified public accountant retained by the Committee to Re-elect the President. The court cited Gertz

language that a person may be "drawn into a particular public controversy and thereby become a public figure." Henry M. Buchanan was cited in an Associated Press dispatch as being involved in the conversion of campaign checks into cash. The court noted that campaign financing was "a matter of the greatest public concern," that Buchanan's involvement was voluntary and that he knew about "the intense public interest" in the spending practices of campaign committees; thus, he could properly be classified as a public figure.[39]

A federal district court saw Mary Guitar as also voluntarily becoming involved in public controversy and thus being properly classified as a public figure. Guitar wrote a book and magazine articles and gave public speeches about keeping new housing units from being built in certain New England areas. She saw as defamatory a critical review of her book, but the court held that she had voluntarily assumed her role as spokeswoman and had injected herself into the forefront of the controversy.[40]

In one case, a publisher was unsuccessful in attempting to show that a business executive was a public figure for a limited group of persons. Matthew J. Lawlor was fired from his executive position with Gulf and Western Industries, apparently for beginning a firm which received fees for placing people in management slots with G&W. A newsletter reported that he "extracted fees for placement of executives," a charge Lawlor denied. The newsletter publishers contended that since Lawlor was a high corporate executive in one of the "top 100 corporations," and

since the newsletter was directed exclusively to that group, Lawlor should be considered a "limited public figure for the limited public event" of his dismissal. However, a federal district court ruled that he was a private person. The court said accepting the defendant's contention "would sweep all corporate officers under the restrictive New York Times rule and distort the plain meaning of the public official or public figure category beyond all recognition."[41] The Gertz Court refused to accept the argument that the lawyer's appearance at the coroner's inquest made him a public official, contending that such a ruling would make all lawyers public officials by their standing as officers of the court.[42]

An appellate court in Illinois also warned against sweeping definitions of public figures. Although finding teachers in the case before it did fit that category, the court said:

> We emphasize that we do not hold here that teachers in a public school are by that very fact public officials. Nor [are they] public figures either in the school community or in the local community served by the school. We simply hold that the plaintiffs here, as teachers in a public college, had, under the circumstances of this case, become public figures in the school community, which was the community served by the instant publication.[43]

In contrast, another Illinois appellate court held without explanation that a policeman was a public official. This court avoided the problem of construing Gertz by not citing the case at all, although that landmark decision had been announced months earlier.[44]

Other individuals found to be public figures by courts after applying the Gertz criteria include a director of an insurance company providing coverage for groups of elderly persons, who also held "a number of philanthropic, educational, and charitable positions" (although actual malice was found and the plaintiff was awarded damages),[45] a former close business associate of Howard Hughes,[46] a high school principal rated as unsuited for his position in a series of newspaper articles on area school administrators,[47] chiropractors who voluntarily appeared on a television broadcast to counter an earlier anti-chiropractic program,[48] and a track coach at the University of Texas, El Paso, who became involved in the controversy over recalcitrant Black athletes on some college campuses in the 1960's and was found to be a public figure for a "limited range of issues."[49]

Libel plaintiffs, however, have been found to be private individuals less often than they have been found to be public figures in cases where the Gertz criteria were specifically applied. For instance, a newspaper printed the name of a person as involved in court proceedings regarding illegal possession of drugs, when it was actually his son before the court. The father was employed by the city school department and was a member of the city Redevelopment Authority. After quoting the Gertz criteria, the Supreme Judicial Court of Massachusetts stated that "the plaintiff clearly was not shown to be a public figure." The father's official conduct was not part of the newspaper

article and, the court said, his public position was irrelevant to the report. The mere fact that he was a public employee did not alter the fact that he was a private person vis-a-vis the defamatory article.[50] Similarly, Gertz was prominent in certain circles, but for the purposes of the American Opinion piece, he was a private individual.

Other courts implied they were following the Gertz criteria without actually citing them. A belly dancer was found to be a public figure since "[a]ll the facts contained in the [magazine] article relate directly to the appellant's professional life."[51] William Buckley was categorized as a public figure, with reference to Gertz, although actual malice was found in publication of comments about him in a book, Wild Tongues.[52]

A Chicago Sun Times article on youth gangs in that city alluded to "the gang headquarters" and was accompanied by a photograph of a woman's home which carried the cutline, "Home of Mrs. Mary Troman at 5832 N. Wayne. Thomas Troman testified that he is a member of the gang." Mrs. Troman alleged that the article and picture taken together implied that her home was the gang headquarters and that she was associated with the gange. In hearing an appeal of the defamation suit brought by Mrs. Troman, the Illinois Supreme Court noted that the trial court had "assumed" she was a private individual. The high court made the same assumption, never discussing the Gertz criteria as applied to the plaintiff.[53] An Ohio appellate court took the same approach in a case arising from the Cleveland Press' report that a building wrecking company had demolished the wrong

structure and which incorrectly quoted the company's former owner as saying, "I guess we got carried away." The court discussed Gertz's liability directives regarding private individuals, but never supplied criteria for holding that the plaintiff fit into that category.[54] The Dodge City Daily Globe incorrectly related that an automobile mechanic had pled guilty to the charge of cruelty to animals. Here, too, the Kansas Supreme Court discussed Gertz in terms of private persons, noted that the "appellant was neither public official nor voluntary public figure," but gave no reasons for such a holding.[55] Presumably in these cases the courts felt that the burden of proof was on the defendant to show the plaintiff was other than a private individual. Cases cited above, in which the Gertz criteria were delineated and specifically applied to plaintiffs, most frequently found the plaintiffs to be public figures. Seemingly, some courts assume the plaintiff is a private person; only if they intend to hold differently will they specify the criteria used. This approach makes it difficult for the media to know precisely why a plaintiff is defined as a private person rather than a public figure.

Strangely, the Court of Appeals for the Second Circuit specifically cited the Gertz criteria, but seemed to misapply them. The court stated that to be classified a public figure an individual must have "'assumed roles of especial prominence in the affairs of society'" and must have invited "'attention and

comment.'" But on considering a defamation case brought by the children of convicted spies Ethel and Julius Rosenberg, the court stated that they "spent much of their early years in the public spotlight," achieved "'general fame or notoriety in the community'" as "children of famous parents," and "renounced the public spotlight by changing their name to Meeropol." In discussing the Meeropols the court notes that "the activities of their parents were monitored by [the media] throughout the world," and that "as children they were the subjects of considerable public attention." Despite none of these statements indicating that the Meeropols "thrust" themselves into public controversy, the court held "beyond any doubt" that they were public figures. Citing another Gertz criterion, the court stated that the Meeropols "cannot argue that they do not have access to the channels of effective communication," though as support the court notes that a recent television drama and newspaper stories continue to discuss the Rosenberg case, not explaining how this gives their children access to the media.[56]

Several courts have considered Gertz's application to individuals they considered private persons, but then relied on the "issue of public concern" concept to deal with the cases before them. These cases include defamation suits arising from the Utica (N.Y.) Observer-Disptach report on the arrest of a public school teacher for possession of heroin which also falsely said he attended a party at which drugs had been found[57]; comments about a computer school and its president, thought

to have been defamed in a television news program regarding employment prospects for the school's graduates[58]; a series of articles in the Gary (Ind.) Post Tribune about an electrical fire in a home which caused the deaths of a woman and her two grandchildren[59]; and a series of stories, editorials, and letters in the Colorado Springs Sun concerning items stolen from an elderly widow's home which were sold to an antique dealer who would not return them without recovering his investment.[60] The Indiana and Colorado courts, respectively, deciding these last two cases specifically rejected Gertz in favor of the Rosenbloom standard.

The divergent approaches state and lower federal courts have taken to deciding the private individual question, as shown by this review of cases, indicates that no clear definition has yet arisen. However, analyzing cases in which courts have construed this portion of Gertz may allow certain conclusions to be drawn.

Persons actively seeking publicity for themselves or their cases will be considered public figures. For instance, Mary Guitar, through publishing and giving public speeches, put her name before the public in regard to a certain issue; a group of chiropractors voluntarily appeared on a television program; and William Buckley deliberately put himself in the public spotlight. These were all held to be public figures.

Similarly, those thrusting themselves into the forefront of public controversies to influence the resolution of those

questions are public figures. Frederick B. Exner, an active opponent of flouridation; junior college teachers who became involved in a textbook and curriculum controversy; William Buchanan, who became increasingly involved with the Committee to Re-elect the President; and, again, Mary Guitar, whose writing and speaking were intended to persuade people to accept her point of view, were all put in this category. However, a business executive was forced into notoriety in his colleagues' eyes by being fired and accused of wrongdoing; a public official involuntarily was put in the limelight when it was incorrectly reported that he was before a court on drug charges; and a woman was reputed by a newspaper to have allowed her home to be used as a youth gang's gathering place. These were all categorized as private individuals for the particular controversies which precipitated the defamation suits. The Supreme Court's admonition to look to the nature and extent of participation in the issue is essential in analyzing these cases. In part, if the participation if voluntary, one may be classified as a public figure; if involuntary, one may not be so classified.

Also, if one accepts a role in society wherein one can expect publicity, one cannot claim to be a private individual. A Howard Hughes associate and a high school principal, for instance, could not make that claim when the defamation suits concerned matters germane to their public lives.

Courts have held that a person can be well known within a limited area and be a public figure. Again, Frederick B. Exner

in the flouridation question and the junior college teachers within that particular community fit this category. But Matthew J. Lawlor was not found to be a public figure within the limited realm of top business executives, and an Illinois appellate court emphasized that not all teachers are necessarily public officials, nor are they necessarily public figures even within the school community. The Supreme Court found Ms. Firestone to be a private person despite her notoriety within her social group and despite being generally well known due to publicity about her divorce trial. The Court held that her divorce was not a "public controversy" and that she did not assume "special prominence in the resolution of public questions."

However, these decisions do not completely clarify the hazy Gertz criteria. Even with the Firestone ruling, the distinction between public figure and private person is not yet clear enough to give the press any confidence in making such decisions. The fear is that the press might indulge in "apprehensive self censorship"[61] rather than risk being subjected to defamation suits in which they can no longer use the New York Times defense and in which liability can be found with as simple a standard as negligence.[62] While there is no evidence that this has yet happened, some see the possibility.[63] In part, the concern is that courts seem to start with the assumption than an individual is a private person. If the defendant claims the contrary, only then will the court apply the Gertz criteria. If they are not [illegible], the original assumption stands. For the

media to incorrectly guess how a judge or jury might construe the criteria, particularly in light of the various interpretations already given them, could mean the loss of considerable sums of money ($100,000 was awarded in the Firestone case, although the figure may be changed on remand).

The public figure/private individual question is the first one to be answered in a defamation action. The media will plead the former, the plaintiff will plead the latter. Thus, in spite of Justice Blackmun's hope that defamation law "has come to rest," there will be no rest for publishers and broadcasters while the criteria for determining who is a public figure and who is a private individual are so unsettled.

NOTES

[1]Case de Libellis Famosis, 5 Coke Reports 125 A (1606), quoted in C. Lawhorne, Defamation and Public Officials 4 (1971).

[2]376 U.S. 254 (1964).

[3]418 U.S. 323 (1974).

[4]44 U.S.L.W. 4262 (March 2, 1976).

[5]New York Times Co. v. Sullivan, 376 U.S. at 279-80.

[6]"Comment, Adjusting the Defamation Standard," 46 Miss. L.J. 279, 291 (1975).

[7]403 U.S. 29 (1971).

[8]383 U.S. 75 (1966).

[9]Id. at 85.

[10]388 U.S. 130 (1967).

[11]See Frakt, "The Evolving Law of Defamation: New York Times Co. v. Sullivan to Gertz v. Robert Welch, Inc. and Beyond," 6 Rutgers-Camden L.J. 471, 475 (1975).

In a concurring opinion in Curtis Publishing Co. v. Butts, Chief Justice Warren said:

> The present cases involve not "public officials," but "public figures" whose views and actions with respect to public issues and events are often as much concern to the citizen as the attitudes and behaviors of "public officials" with respect to the same issues and events. . . . A "public figure" is one who is not a public official but is "nevertheless intimately involved in the resolution of important public questions or, by reason of fame, shapes events in areas of concern to society at large."

388 U.S. at 162, 164.

[12]385 U.S. 374 (1967).

[13]403 U.S. 29 (1971).

[14]Id. at 43.

[15]Id. at 44.

[16]Id. at 45-46.

[17]Gertz v. Robert Welch, Inc., 418 U.S. at 354 (Blackmun, J., concurring).

[18]See "The Supreme Court, 1973 Term," 88 Harv. L. Rev. 43, 139 (1974).

[19]403 U.S. at 78 (Marshall, J., dissenting) and 62 (Harlan, J., dissenting).

[20]In Rosenbloom, Justice Brennan says it is "legal fiction" that a public figure voluntarily exposes himself to the risk of unfavorable publicity. 403 U.S. at 48.

[21]418 U.S. at 345.

[22]Id.

[23]Id. at 351.

[24]Id. at 352.

[25]Id. at 351-52.

[26]Id. at 352.

[27]"Recent Decisions, Constitutional Privilege for Defamation--Private Individual--Libel--Damages," 14 Duq. L. Rev. 89, 99 (1975).

[28]Gertz v. Robert Welch, Inc., 418 U.S. at 345.

[29]"The Supreme Court," supra, note 18, at 145.

[30]E.g., Garrison v. Louisiana, 379 U.S. 64 (1964); St. Amant v. Thompson, 390 U.S. 727 (1968).

[31]44 U.S.L.W. 4262.

[32]Id. at 4264.

[33]Id.

[34]Id. at 4274.

[35]418 U.S. at 343; see "Comment, The Expanding Constitutional Protection for the News Media from Liability for Defamation: Predictability and the New Synthesis," 70 Mich. L. Rev. 1547 (1972).

[36]Weber v. Woods, 334 N.E.2d 857 (Ill. App. 1975).

[37]Exner v. American Medical Association, 529 P.2d 863 (Wash. App. 1974).

[38]Johnson v. Board of Junior College District #508, 334 N.E.2d 442 (Ill. App. 1975).

[39]Buchanan v. Associated Press, 398 F. Supp. 1196 (D.D.C. 1975).

[40]Guitar v. Westinghouse Electric Corp., 396 F. Supp. 1042 (S.D.N.Y. 1975).

[41]Lawlor v. Gallagher Presidents' Report, Inc., 394 F. Supp. 721 (S.D.N.Y. 1975).

[42]418 U.S. at 351.

[43]Johnson v. Board, 334 N.E.2d at 447, n. 1.

[44]Weber v. Woods, 334 N.E.2d 857.

[45]Davis v. Schuchat, 512 F.2d 731 (D.C. Cir. 1975).

[46]Maheu v. Hughes Tool Co., 384 F. Supp. 166 (C.D. Calif. 1974).

[47]Kapiloff v. Dunn, 343 A.2d 251 (Md. Ct. Sp. App. 1975).

[48]Cera v. Gannett Co., Inc., 365 N.Y.S.2d 99 (App. 1975).

[49]Vandenburg v. Newsweek, 507 F.2d 1024 (5th Cir. 1975).

[50]Stone v. Essex Co. Newspapers, Inc., 330 N.E.2d 161 (Mass. 1975).

[51]James v. Gannett Co., Inc., 366 N.Y.S.2d 737 (App. 1975).

[52]Buckley v. Littell, 394 F. Supp. 918 (S.D.N.Y. 1975).

[53]Troman v. Wood, 340 N.E.2d 292 (Ill. 1976).

[54]Thomas H. Maloney & Sons, Inc. v. E. W. Scripps Co., 334 N.E.2d 494 (Ohio App. 1974), cert. denied, 96 S.Ct. 151 (1975).

[55]Gobin v. Globe Publishing Co., 531 P.2d 76 (Kan. 1975).

[56]Meeropol v. Nizer, 505 F.2d 232 (2d Cir. 1974).

[57]Chapadeau v. Utica Observer Dispatch, Inc., 341 N.E.2d 569 (N.Y. 1975).

[58]Commercial Programming Unlimited v. Columbia Broadcasting Systems, Inc., 367 N.Y.S.2d 986 (Sup.Ct. 1975).

[59]Aafco Heating and Air Conditioning Co. v. Northwest Publications, Inc., 321 N.E.2d 580 (Ind. App. 1974), cert. denied, 44 U.S.L.W. 3467 (Feb. 24, 1976).

[60]Walker v. Colorado Springs Sun, Inc., 538 P.2d 450 (Colo. 1975).

[61]Stone v. Essex Co. Newspapers, 330 N.E.2d at 169.

[62]Justice Brennan says in dissenting from the Gertz majority opinion:

> Adoption . . . of a reasonable care standard in cases where private individuals are involved in matters of public interest . . . will . . . lead to self-censorship since publishers will be required carefully to weigh a myriad of uncertain factors before publication.

418 U.S. at 366.

[63]See, e.g., Frankt, supra, note 11.